

**BEFORE THE  
DEPARTMENT OF CONSUMER AFFAIRS  
FOR THE CEMETERY AND FUNERAL BUREAU  
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement  
of:

Case No.: A1 2014 150

**THOMAS MATTHEW BARTEL**

Funeral Director License No. FDR 3616  
Embalmer License No. EMB 8761

Petitioner.

**DECISION AFTER PETITION FOR REINSTATEMENT**

This matter came before the Director of the Department of Consumer Affairs (Department) for the Cemetery and Funeral Bureau (Bureau) by submission of a Petition for Reinstatement, dated November 16, 2018, by Petitioner Thomas M. Bartel. Petitioner seeks to have his Funeral Director and Embalmer licenses reinstated by the Bureau. In accordance with Government Code section 11522, the parties were afforded an opportunity to submit written argument on or before January 31, 2019.

On January 28, 2019, written opposition to the Petition for Reinstatement was filed by the Attorney General's Office. Petitioner's written argument in support of his petition was filed with the Bureau on January 24, 2019.

The Director, having reviewed and considered the parties' evidence and written argument, hereby denies the petition.

**FACTUAL FINDINGS**

*License and Probationary History*

1. On February 19, 2002, the Bureau issued Embalmer License Number EMB 8761 to the Petitioner. On March 16, 2013, the Bureau issued Funeral Director License Number FDR 3616 to the Petitioner.

2. On or about February 17, 2015, the Bureau filed Accusation No. A1 2014 150 (Accusation) against the Petitioner and Sinclair Family Cremation and Burial Service (Sinclair). At that time, Petitioner served as both Partner and Funeral Director for Sinclair. The Accusation alleged that: (a) Petitioner committed misrepresentation or fraud by charging the decedent's

family for an embalming service never performed on the decedent;<sup>1</sup> (b) Petitioner committed gross negligence, gross incompetence, or unprofessional conduct in the practice of funeral directing or embalming; (c) Petitioner failed to register the decedent's death with the local registrar within eight days; (d) Petitioner failed to exercise supervision and control to ensure full compliance with the law, and (e) Petitioner failed to obtain authorization for disposition of decedent's body on a Bureau approved form.

3. On June 9, 2015, Petitioner entered into a Stipulated Settlement and Disciplinary Order (Order) with the Bureau.<sup>2</sup> The Order revoked Petitioner's Funeral Director and Embalmer licenses. However, the revocation was stayed, and Petitioner was placed on three years probation, subject to various terms and conditions, including cost recovery, practice limitations on his duties within the funeral industry, and requiring completion of a Bureau approved ethics course within the first year of probation. On July 8, 2015, the Order was adopted by the Department's then Deputy Director for Legal Affairs, Doreathea Johnson (Johnson), effective August 7, 2015.

4. In addition, the Order found the Bureau's costs of investigation and enforcement in this matter to be \$7,375.54. Probation condition No. 8 of the Order specified that, "Probation shall not terminate until full payment has been made. Respondent's Bartel's license shall not be renewed until the cost recovery has been paid in full or Respondent is otherwise in compliance with a payment plan approved by the Department."

5. On July 19, 2016, the Bureau filed a Petition to Revoke Probation as a result of Petitioner's failure to comply with the terms and conditions of the Order. On October 11, 2016, Petitioner's Funeral Director License Number FDR 3616 and Embalmer License Number EMB 8761 were ordered revoked by way of a Default Decision and Order (DDO) issued by Deputy Director Johnson, effective November 11, 2016. The DDO noted that Petitioner subjected his licenses to discipline based on the following:

- a. [Petitioner] failed to comply with probation condition 1, "Obey All Laws."
- b. [Petitioner] failed to comply with probation condition 2, "Quarterly Reports."
- c. [Petitioner] failed to comply with probation condition 8, "Cost Recovery."
- d. [Petitioner] failed to comply with probation condition 9, "Limitation of Duties."
- e. [Petitioner] failed to comply with probation condition 10, "Ethics."

6. Further, an additional \$1,632.50 in costs were assessed against the Petitioner, which brought Petitioner's total cost recovery to \$9008.04. To date, Petitioner has failed to provide any cost reimbursement to the Bureau, and has failed to complete the mandatory ethics course set forth by probation conditions eight and ten, respectively.

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<sup>1</sup> From approximately December 29, 2013, through May 2, 2014, Petitioner allowed decedent's body to remain in storage without being embalmed. Decedent's body was subsequently transported to Nor-Cal Crematory on May 2, 2014, and cremated on May 3, 2014.

<sup>2</sup> Pursuant to the same Order, Sinclair surrendered Funeral Establishment License No. FD 2177 to the Department's Director.

### *Petition for Reinstatement*

7. On or about November 29, 2018, the Bureau received from Petitioner a Petition for Reinstatement of his Funeral Director and Embalmer Licenses. Petitioner's request was brief, and stated the following: "I am requesting reinstatement of both my Embalmer License (8761) and my Funeral Director License (3616). Thank You." Petitioner did not attach any supporting documentation with his petition.

8a. On or about January 24, 2019, the Department received Petitioner's written argument in support of his petition. Petitioner claims to have a renewed sense of commitment to the funeral industry and contends that, "all I need is to have my licenses back so I can care for those who have lost loved ones again both as a funeral director and an embalmer."

8b. In addition, Petitioner submitted four letters of recommendation with his written argument: one from Sonja Valerie of Valerie & Associates, dated January 23, 2019; one from Carla Porter, Manager of Lowest Cost Cremation and Burial, dated January 23, 2019; one from Dr. Anthony Wallace, President CEO and Funeral Director of Ramsey Wallace Funeral Home & Chapel, Inc., dated January 23, 2019; and one from David Moore, Software Engineer, dated January 24, 2019. All four letters of recommendation speak highly of the Petitioner, but none address the issue of rehabilitation or indicate that they are aware of Petitioner's prior misconduct.

9. Furthermore, Petitioner's written argument does not touch upon his efforts toward rehabilitation, nor does his written argument provide any assurance that his behavior will not be repeated if he is reinstated by the Bureau. Additionally, Petitioner failed to articulate why he has not paid any cost reimbursement to the Bureau, or why he has failed to complete the mandatory ethics course.

10. Deputy Attorney General (DAG), Brent O. Jex timely filed an Opposition to the Petition for Reinstatement with the Bureau on January 28, 2019, recommending that Petitioner's request for reinstatement be denied.

11. On February 1, 2019, the Department received a letter from the Petitioner in response to DAG Jex's Opposition to the Petition. However, Petitioner's letter is untimely, having been received by the Department after the deadline for submission of written argument and will not be taken under consideration by the Director.

### **LEGAL CONCLUSIONS**

#### *Burden/Standard of Proof*

1. Government Code section 11522 provides, in pertinent part, the following:

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition . . . . The agency itself shall decide the petition, and the

decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement.

2. Business and Professions Code section 7601.1 states:

Protection of the public shall be the highest priority for the Cemetery and Funeral Bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

3. In a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and is therefore entitled to have his licensed restored, and not on the Bureau to prove the contrary. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal. App. 3d 1392, 1398.) Petitioner must bear in mind that as an applicant for reinstatement he, "is not in the position of an untried newcomer, but a fallen licentiate." (*Ibid.*) "It is elementary that a person seeking restoration of a revoked license has no greater rights than a person seeking an original license." (*Housman v. Board of Medical Examiners* (1948) 84 Cal. App. 2d 308, 312.) Moreover, it is reasonable, "that the person seeking reinstatement...should be required to present stronger proof of his rehabilitation." (*Housman, supra*, at p. 315.)

4. In seeking reinstatement, petitioner bears a heavy burden of proving rehabilitation. (*Hippard v. State Bar* (1989) 49 Cal. 3d 1084, 1091-1092.) Petitioner carries the burden to establish by clear and convincing evidence that he is entitled to the requested relief. (*Ibid.*; *Flanzer v. Board of Dental Examiners, supra*, 220 Cal. App. 3d 1392, 1398.) "The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1086 (dis. opn. of Lucas, C.J.)). The more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be. (*In re Menna* (1995) 11 Cal.4th 975, 987; see *In re Nevill* (1985) 39 Cal.3d 729, 735; *Roth v. State Bar* (1953) 40 Cal.2d 307, 313; *In re Gossage* (2000) 23 Cal.4th 1080, 1096.)

5a. Petitioner applied for reinstatement pursuant to Government Code section 11522. Nonetheless, the Bureau's regulations governing license reinstatement under section 11522 are instructive here. California Code of Regulations, Title 16, section 1253.5, subdivision (b) provides the following:

When considering a petition for reinstatement of a license under the provisions of Section 11522 of the Government Code, the bureau shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in Section 1253 of this article.

5b. The criteria specified in Title 16, section 1253 are:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (d) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

6a. The misconduct committed by the Petitioner which led to the revocation of his licenses involved a serious lapse in his ethical obligations. Specifically, Petitioner represented to the daughter of a decedent that he had embalmed the decedent's body when, in fact, he had not. The evidence establishes that Petitioner misrepresented this fact in order to collect the embalming fee that Sinclair never performed. (See Factual Finding 2.) Petitioner's actions are inimical to the qualifications, functions, and duties of a licensed funeral director. In contrast, Petitioner has not committed any subsequent fraudulent acts that could serve as grounds for denial since the imposition of revocation of his funeral director and embalmer licenses on October 11, 2016. Moreover, Petitioner submitted four letters of recommendation which attest to his professional qualities.

6b. The Director is mindful and acknowledges that Petitioner is making efforts and strides towards putting this most unpleasant episode behind him. Petitioner's actions are to be commended. On the other hand, since persons under the direct supervision of judicial or correctional authorities must behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage, supra*, at p. 1099.)

7a. Rehabilitation is not an event but rather a process. It is a concept that must be evaluated and assessed on multiple levels. The opportunity at a second chance has long and deep roots in our culture and the law. But, the opportunity at a second chance does not come automatically, simply earned with the passage of time. To that end, what is not attached to Petitioner's request for reinstatement is also significant. Specifically, Petitioner did not submit a personal statement with his petition demonstrating his changed behavior and reliability that would assist the Director in determining his rehabilitation. (See Factual Findings 8a. and 9.) Furthermore, a condition precedent for establishing rehabilitation is a mature understanding of the harm done and remorse for one's actions. Quite simply, one must accept responsibility for the misconduct and demonstrate an appreciation for why it is wrong. Petitioner's written argument fails to offer any insight concerning his past misconduct.

7b. In the instant petition, Petitioner's failure to take responsibility or acknowledge the gravity of his prior conduct, including his failure to express sympathy toward the decedent's family suggests that he is not truly remorseful. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal. 3d. 933, 940.) Indeed, Petitioner attempts to demonstrate his rehabilitation by reliance upon his letters of recommendation. However, the Director finds the letters unpersuasive, considering that there is no indication the individuals knew of Petitioner's prior misconduct and also failed to address how the Petitioner is rehabilitated. (See Factual Finding 8b.)

8. Most importantly, Petitioner has failed to fully comply with the terms and conditions of his Stipulated Settlement and Disciplinary Order; an agreement which he voluntarily entered into back in June 2015. (See Factual Findings 3, 4, and 5.) The evidence establishes that more than three years have lapsed without the Petitioner making a single payment toward cost recovery or completion of his mandatory ethics course. Petitioner's written argument fails to offer a credible explanation as to why he has not complied with these conditions.

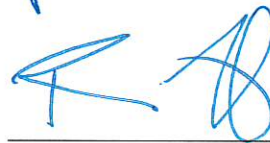
9. Accordingly, Petitioner has made some progress. However, in light of the troubling acts he committed, Petitioner must present strong proof of rehabilitation to the Department and the Bureau. Thus, to obtain reinstatement of his license, Petitioner had the burden of establishing that he has been rehabilitated and that he does not pose a risk to the public interest, safety or welfare. Based upon the totality of the circumstances, Petitioner has not established that he has done the things that are required to qualify for reinstatement. Therefore, cause exists to deny the petition.

### ORDER

The Petition for Reinstatement of Funeral Director License Number FDR 3616 and Embalmer License Number 8761, filed by Petitioner Thomas M. Bartel, is hereby **DENIED**.

This decision shall become effective on April 12, 2019.

DATED: March 13, 2019.



RYAN MARCROFT  
Deputy Director, Legal Affairs Division  
Department of Consumer Affairs